Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 24 OCTOBER 24, 1990 No. 42/43

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Chapter I

(T.D. 90–78)

RIN 1515-AA61

CUSTOMS REGULATIONS AMENDMENTS TO CONFORM WITH THE HARMONIZED SYSTEM OF TARIFF CLASSIFICATION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On December 21, 1988, T.D. 89–1 was published in the Federal Register (53 FR 51244) to set forth interim amendments to the Customs Regulations conforming those regulations to the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS and the interim regulations went into effect on January 1, 1989. This document adopts those interim regulations as final rules, with some changes both in response to comments received during the public comment period and in order to correct errors in the published interim regulations.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: John G. Black, Commercial Rulings Division (202-566-8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 1, 1983, the International Convention on the Harmonized Commodity Description and Coding System was opened for signature. The Harmonized Commodity Description and Coding System (Harmonized System, or HS), set forth as an Annex to that Convention, is a multipurpose product nomenclature developed over a 10-year period under the auspices of the Customs Co-operation Council in Brussels, Belgium. It is intended to be used to describe and classify goods in international trade for customs (including tariff), trade statistics, and transport documentation purposes. The anticipated use of the HS on a worldwide basis was expected to increase uniformity and predictability of trade data and to promote standardization of trade and transport documentation. The U.S. and its major trading partners were directly and continually in-

volved in the development of the HS. The Convention with its Annex was implemented for international use on January 1, 1988.

In anticipation of possible adoption of the HS by the U.S., the President in August 1981 requested that the U.S. International Trade Commission initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the United States (TSUS), the then-existing reference source for determining the classification of imported merchandise, into the structure of the HS. The resulting conversion followed the HS texts but also provided product descriptions and numerical coding beyond the 6-digits of the international system in order to take into account U.S. tariff and statistical requirements. Thus, each tariff (duty rate) provision was coded in 8-digits and each statistical reporting number in 10-digits. This conversion, submitted to the President on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of the U.S. Trade Representative, and was republished as TPSC 84–78 on September 30, 1984. A further, more comprehensive, revision published in October 1986 was the basis for GATT Article XXVIII negotiations between the U.S. and its major trading partners looking toward U.S. adoption of the HS.

Following the conclusion of the GATT negotiations, a final conversion entitled the Harmonized Tariff Schedule of the United States (HTSUS) was prepared and submitted to Congress with proposed legislation to approve U.S. accession to the HS Convention and to implement the HTSUS as the new U.S. tariff schedule. This proposed legislation was enacted as part of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, August 23, 1988. Section 1203 of the Act approved U.S. accession to the HS Convention, section 1204 enacted the HTSUS as a replacement for the TSUS, and section 1217(b) provided that section 1204 would take effect on January 1, 1989. On October 31, 1988, the U.S. deposited its instruments of accession to the HS Convention, thereby becoming a Contracting Party thereto.

On December 21, 1988, Customs published T.D. 89–1, 53 F.R. 51244, setting forth interim amendments to the Customs Regulations (19 CFR Chapter I) to conform those regulations to the HS and in particular to reflect the structure, language, and numbering of the HS-based HTSUS; the amendments involved principally the replacement of TSUS numerical and organizational references with the new corresponding HTSUS references, the amendment of regulatory texts to reflect HTSUS terminology which differed from that of the TSUS, and, for purposes of style, the elimination of many footnotes. Although the interim amendments took effect on January 1, 1989, in order to coincide with the implementation of the HTSUS, the notice solicited public comments on those amendments and, after an extension of time published on March 7, 1989, 54 F.R. 9429, the public comment period closed on March 21, 1989. On February 15, 1989, Customs published T.D. 89–26, 54 F.R. 6881, to clarify and correct certain authority citations set forth in T.D. 89–1.

After the interim regulations went into effect, guidelines were drafted by the National Import Specialist Division of Customs to assist the trade and Customs field personnel in the uniform application of criteria for accurate and complete invoices for various specific HTSUS provisions, with particular reference to the requirements of 19 CFR 141.89(a) which was amended by T.D. 89–1. After reviewing the comments received in response to the interim regulations and the draft guidelines on invoice requirements, Customs determined that it would be beneficial to obtain further information from the importing community relating to the invoice requirements under 19 CFR 141.89(a) and the draft guidelines. Accordingly, on November 14, 1989, Customs published a notice at 54 F.R. 47348 which (1) announced a series of public meetings to be held in New York from November 27 to December 8, 1989, to discuss invoice requirements with the importing community and (2) reopened the comment period of the interim regulations solely regarding the invoice requirements, with comments to be submitted on or before February 7, 1990.

DISCUSSION OF COMMENTS AND FINAL ACTION

A total of fourteen comments were received from the public in response to T.D. 89–1, all but three of which concerned either invoice requirements or issues outside the scope of the interim regulations. In addition, in excess of sixty comments were subsequently received from the public either with reference to the draft guidelines on invoice requirements or in response to the November 14, 1989, notice which reopened the comment period for invoice requirement purposes.

In view of the large number of complex issues raised in the numerous comments received on invoice requirements, and in consideration of the significant impact which invoice requirements have on the trade community, Customs has determined that further study is necessary before those invoice issues can be properly resolved. At the same time, there are other issues raised in the public comments or disclosed during Customs internal review which clearly warrant changes to the interim regulatory texts or to other provisions in 19 CFR Chapter I which were not reflected in T.D. 89–1 or T.D. 89–26. Accordingly, in order to not delay implementation of those other changes pending resolution of the invoice issues, Customs has determined that (1) the interim regulations should be adopted as a final rule which should also reflect technical or editorial changes to the interim texts and to other regulatory provisions based on the public comments and Customs internal review, and (2) all issues regarding invoice requirements should be dealt with as appropriate in a separate document at a later date. The public comments received on non-invoicing issues, and the final changes to the regulations based on those comments or on Customs own review, are discussed below.

Part 7:

The authority citation for Part 7 is being revised to reflect the proper HTSUS General Note cite which was not corrected in T.D. 89–26.

Part 10:

The following changes are being made to Part 10 to correct errors in T.D. 89–1 or, in one instance, to insert a T.D. 89–1 change which is not reflected in current 19 CFR Chapter I:

Section 10.47 was amended by T.D. 89–1 by replacing the item 870.27, TSUS, reference with the words "subheading 4705.00.00, Harmonized Tariff Schedule of the United States"; this number should have been "9705.00.00" which is the HTSUS subheading that covers the goods of former item 870.27, TSUS. However, on further review Customs has determined that the entire section should be removed. It is noted in this regard that, although all of the products of TSUS item 870.27 were transferred to HTSUS subheading 9705.00.00, the HTSUS provision (1) covers other products in addition to those of TSUS item 870.27; (2) does not describe products "imported for" any specific uses as provided in TSUS item 870.27; and (3) does not contain the limiting language "and not for sale or other commercial use" used in TSUS item 870.27. Inasmuch as the regulatory requirement for the filing of a declaration regarding the intended uses of the imported merchandise was based on statutory standards which have been removed, the regulation no longer serves any purpose and thus should not be retained.

Section 10.53, which concerns antiques, was amended in several places by replacing TSUS items 766.20 and 766.25 with references to HTSUS subheadings 9705.00.00 and 9706.00.00. The references to subheading 9705.00.00 are being deleted because that subheading covers neither antiques nor products for which age is a factor for classification purposes. In addition, the references to "Chapter 96" in paragraphs (f) and (g) of this section are being corrected to read "Chapter 97".

The references in sections 10.76 (a) and (b) to HTSUS subheading "9817.70" are being corrected to read "9817.00.70".

The reference in section 10.90(a) to HTSUS subheading "8524.20" is being corrected to read "8524.90.20".

T.D. 89–1 amended section 10.121 (a) by replacing the TSUS headnote reference at the end thereof with a reference to "U.S. Note 1, Subchapter XVII, Chapter 98, HTSUS". However, this change is not reflected in the current version of 19 CFR Chapter I. This printing error is corrected in this document.

Part 19:

T.D. 89–1 amended section 19.17 (a) in part by replacing the reference to Schedule 6, Part 1 or 2, TSUS, with a reference to "Chapter 26, 71, 72, and 73" of the HTSUS. Two commenters stated that the amended section, which identifies those metal-bearing materials that may be smelted or refined in bonded warehouses, is improperly limited in scope because it does not cover metals other than iron or steel. These commenters argued that the HTSUS reference should be to "Chapters 26 and 71 through 83", and they pointed out in this regard that this would align the regulation with 19 U.S.C. 1312 (f) which was amended to refer to these

HTSUS Chapters by section 1214 (h) of the Omnibus Trade and Competitiveness Act of 1988.

Customs agrees that the regulatory provision should be changed as suggested by these commenters so as to reflect the scope of the statutory provision which is the basis for, and is cited in, the regulation. Although the mention of Chapters 82 and 83 in the statute and regulation broadens the scope by including articles not previously covered by Schedule 6, Parts 1 and 2, TSUS, the meaning of "metal-bearing materials" set forth in 19 U.S.C. 1312 (f) remains the same. Thus, section 19.17 will continue to apply to metal-bearing ores and other metal-bearing materials, metal waste and scrap, unwrought metal, and metal compounds.

Part 24:

T.D. 89–1 inadvertently failed to replace the TSUS references with appropriate HTSUS references in sections 24.23(b)(1)–(3); this document corrects these omissions. The document also inserts the proper HTSUS reference in section 24.23(b)(4). The amendments to sections 24.23(b)(1), (3) and (4) conform to amendments to 19 U.S.C. 58c(a)(9) effected by the Omnibus Trade and Competitiveness Act of 1988 and by the Customs and Trade Act of 1990.

Part 132:

T.D. 89–1 amended section 132.6 by replacing the reference to TSUS General Headnote 3(e) (which should have been amended previously to read General Headnote "3(d)") with a reference to HTSUS "General Note 3(c)". The amended regulation, which has reference to products of Communist countries and areas, should have referred to HTSUS General Note "3(b)". This document corrects this error.

Part 134:

T.D. 89–1 revised section 134.43(a) by deleting the list of TSUS item numbers and, in order to ensure the same scope, by inserting in the regulation the names of additional specific types of products covered by those TSUS numbers. However, "dental instruments" (covered by deleted TSUS item 709.25) and "scientific and laboratory instruments" (which were listed in the regulation before its revision) were inadvertently left out of the text appearing in T.D. 89–1. This document inserts those references.

Section 134.43(b) was amended by T.D. 89–1 by replacing the existing TSUS headnote references with a reference to "Chapter 91, Additional U.S. Note 4", but without referring to the "Harmonized Tariff Schedule of the United States". This incomplete citation is corrected.

Part 141:

T.D. 89–1 revised section 141.4(b) to cite specific HTSUS provisions covering vessels for which an entry must be filed. Inadvertently omitted from the revised text were references to HTSUS heading 8907 and subheadings 8905.90.10 and 8906.00.10. This document corrects this oversight. In addition, the reference to General Note "5" is being corrected to read "4" in section 141.4(a).

Part 142:

T.D. 89–1 as published in the Federal Register (but not as published in the *Customs Bulletin*) omitted some lines, consisting of (1) the authority citation for Part 142 and (2) an amendment to section 142.6(a)(4), the latter comprising a direct conversion to HTSUS terminology without any change in substance. This document sets forth those omitted lines.

Part 151:

One commenter suggested a number of changes to the regulatory provisions concerning petroleum and petroleum products. With regard to sections 151.13(a)(1) and 151.44(a), this commenter argued in favor of using metric tons and gallons, rather than barrels, as units of quantity, because many U.S. and foreign petroleum measurement operations are conducted on an English (gallon) or metric (metric ton) basis and thus use of the barrel standard would cause confusion and lead to inconsistencies. Moreover, this commenter stated that any use of a barrel standard should be based on clearly defined metric guidelines and conversion factors, pointing out that the definition of "barrel" in Additional U.S. Note 7 to Chapter 27, HTSUS, should refer to "158.9873 liters" rather than "158.98 liters". With regard to the analysis methods and standards set forth in the tables under sections 151.13(a)(2) and 151.14, the commenter proposed a number of changes involving both the inclusion of API (American Petroleum Institute) standards with the existing ASTM standards and the addition of some new standards and methods. Finally, this commenter argued in favor of use of a net quantity (defined to mean Net Standard Volume, *i.e.*, excluding sediment and water) for entry and reporting purposes, with the deletion of the reference to "gross quantity" in section 151.13(a)(1) (to be consistent with the "net quantity" reference in section 151.47) and with the deletion of the section 151.46 Customs Form 4315 allowance application procedure (to reduce the paperwork burden on Customs and importers).

Customs does not agree with the proposal to replace the barrel unit of quantity with metric tons or gallons. Barrels are specifically provided for in the Units of Quantity column opposite heading 2710 in the HTSUS, and Customs has no authority to apply a regulatory standard which conflicts with the statutory standard. Similarly, Customs has no authority to modify Additional U.S. Note 7 to Chapter 27 to refer to "158.9873" liters. Questions regarding possible amendments to the provisions set forth in the HTSUS more properly fall under the jurisdiction of the U.S. International Trade Commission.

With regard to the proposal to amend the tables under sections 151.13(a)(2) and 151.14 by including API testing standards with the ASTM standards and by adding new standards and methods, Customs does not believe that it is necessary or appropriate to take such action at the present time. No allegation has been made to the effect that the standards set forth in the regulations are incorrect or otherwise unsuitable, and Customs simply does not have the manpower resources that would be required to determine whether the API and other suggested standards

and methods in fact correspond precisely to the existing ASTM standards contained in the regulations. Customs recognizes, however, that some API standards were developed jointly with the ASTM standards and thus may be equivalent. Accordingly, in order to not foreclose the use of alternate but fully equivalent testing standards and in order to avoid regulatory amendments whenever a specified ASTM standard is replaced by a new ASTM standard, the table under section 151.13(a)(2) is being amended in this document by adding the words "or other equivalent approved method", where appropriate, within the parentheses after the ASTM standard specified in the "Characteristic (analysis method)" column. It should be noted, however, that a laboratory which wishes to use a testing standard not specified in the regulation must obtain approval from Customs for use of that alternate standard in order to ensure that the results will be acceptable to Customs.

Finally, Customs does not agree with the proposals to provide in the regulations for the use of only net quantity and to do away with the Customs Form 4315 allowance application procedure. The present regulations adequately provide the option of using net quantity both for purposes of gauging reports (section 151.13(a)(1)) and for entry purposes (section 151.47). However, there may be circumstances where the importer may prefer to make entry based on the gross quantity, for example when the analytical laboratory report is not available for filing with the entry summary as required under section 151.47; in such a case the importer could later file the Customs Form 4315 so as to ensure that liquidation would be based on the net quantity. Customs sees no reason to deprive importers of this flexibility. In addition, retention of the Customs Form 4315 procedure is necessary because Customs often uses the form to verify the importer's claim against the gauger's or Customs laboratory test, and the determination of sediment and water by a Customs-accredited commercial laboratory, rather than simply accepting the net standard volume as determined by a party not under the control of Customs prior to arrival in the U.S., is a necessary control procedure.

Customs has also determined during its internal review of the interim regulations that other changes should be made to the regulations in Part 151. These changes, and the reasons therefor, are as follows:

1. All references to the analysis of sugar (sucrose, raw sugar), molasses, and standard newsprint (HTSUS headings 1701, 1703, and 4801) have been removed from sections 151.13(a)(2) and 151.14. The removal of sugar and molasses testing is due to the fact that, effective January 10, 1989, Customs laboratories assumed the responsibility for testing sugar and for reporting quantities for purposes of the sugar quota program; thus, it is no longer necessary for commercial laboratories to do the testing and therefore no such laboratories have been approved for such purposes (except in the case of molasses weight per gallon which uses a Fahrenheit standard and thus is no longer relevant under the HTSUS). The removal of the standard newsprint testing is necessitated by the fact that commercial laboratories are unwilling to perform this type of test-

ing due to high testing costs, with the result that Customs has no basis for monitoring this type of-testing. The resulting changes to the regulations involve: (1) removal of "TAPPI, ICUMSA," from the text of section 151.13(a)(2); (2) removal of the references in question from the "HTSUS", "Product", and "Characteristic (analysis method)" columns in the table under section 151.13(a)(2); (3) removal of the words "the International Commission for Uniform Methods of Sugar Analysis (ICUMSA)," from section 151.13(g)(1); and (4) redrafting of section 151.14 by removing the table and setting forth the regulation in paragraph form to reflect the retention of only one category (sediment and water).

2. The spelling of "naptha" is being corrected to read "naphtha" in the two tables under section 151.13.

3. Section 151.46 is being revised to set forth a cross reference to section 158.13, and the substance of section 151.46 is being transferred to section 158.13 as a separate subparagraph under paragraph (a). It is noted in this regard that T.D. 89–1 revised section 151.46 (to reflect the amendment to 19 U.S.C. 1507 effected by section 1902 of the Omnibus Trade and Competitiveness Act of 1988) to provide for an allowance for all detectable water and sediment in imported petroleum and petroleum products. However, the revision of section 151.46, by removing the cross-reference to section 158.13 and by including substantive procedural requirements (formerly covered exclusively by section 158.13) in revised section 151.46, has resulted in a contextual or organizational problem: section 151.46 no longer refers to any quantitative standards (which is the overall context of Part 151) but rather refers to procedures for obtaining an allowance for duty purposes (which is the context of Part 158), with the result that there may be difficulty in knowing where to find the allowance provisions relating to petroleum and petroleum products. The transfer of the substance of present section 151.46 to section 158.13, with modifications to the titles of both sections and other consequential changes to clarify that different standards apply to petroleum products than to other types of products, will obviate these problems.

Finally, the citation of authority for Part 151 is being revised by deleting the authority citation for section 151.43, a section removed and reserved by T.D. 87–39, 52 FR 9784.

Part 159:

T.D. 89–1 amended section 159.7(a)(1) by replacing the reference to TSUS Schedule 1, Part 12, with a reference to HTSUS headings 2207 and 2208. However, products covered by the TSUS reference also fall under HTSUS headings 2203, 2204, 2205, and 2206. Accordingly, the regulation is amended by this document to include references to those additional headings.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

PAPERWORK REDUCTION ACT

The collection of information contained in the final regulation in § 134.22(b), pertaining to country of origin marking on imported containers or holders, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504 (h)) under control number 1515-0163. The estimated average burden associated with the collection of information in this final rule is 15 seconds per response and 10 minutes on an annual basis per respondent. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR, CHAPTER I

Customs Duties and Inspection; Harmonized Tariff Schedule of the United States, Imports.

AMENDMENTS TO THE REGULATIONS

Accordingly, the interim rule amending 19 CFR Chapter I which was published at 53 FR 51244-51271 on December 21, 1988, is adopted as a final rule with the following changes:

PART 7 – CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for Part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

PART 10 – ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

§ 10.47 [Removed and Reserved]

2. Part 10 is amended by removing § 10.47 and by marking it "reserved".

§ 10.53 [Amended]

3. Section 10.53 is amended as follows:

(a) Paragraphs (a) and (c) are amended by removing the words "9705.00.00 or".

(b) Paragraphs (b), (d) and (f) are amended by removing the words "subheadings 9705.00.00 and" wherever they appear and by adding, in their place, the word "subheading".

(c) Paragraphs (f) and (g) are amended by removing the words "Chapter 96" and by adding, in their place, the words "Chapter 97".

§ 10.76 [Amended]

4. Section 10.76, paragraphs (a) and (b), are amended by removing the words "subheading 9817.70" and by adding, in their place, the words "subheading 9817.00.70".

§ 10.90 [Amended]

5. Section 10.90 paragraph (a) is amended by removing the words "subheading 8524.20" and by adding, in their place, the words "subheading 8524.90.20".

§ 10.121 [Amended]

6. Section 10.121, paragraph (a), is amended by removing the words "headnote 1, Part 6, schedule 8, Tariff Schedules of the United States" and by adding, in their place, the words "U.S. Note 1, Subchapter XVII, Chapter 98, HTSUS".

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for Part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

§ 19.17 [Amended]

2 . Section 19.17, paragraph (a) is amended by removing the words "Chapter 26, 71, 72, and 7311 and by adding, in their place, the words Chapters 26 and 71 through 83".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a-58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701; Pub. L. 99-662, unless otherwise noted.

§ 24.23 [Amended]

2. Section 24.23 is amended as follows:

(a) Paragraph (b)(1) is amended by removing the words "schedule 8, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202)" and by adding, in their place, "Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202)".

(b) Paragraph (b)(2) is amended by removing the words "(General Headnote 3 (a), TSUS)" and by adding, in their place, "(General Note 3 (a) (iv), HTSUS.)".

(c) Paragraph (b)(3) is amended by removing the words "(General Headnote 3(e)(vii), TSUS.)" and by adding, in their place, "(General Note 3(c)(v), HTSUS.)".

(d) Paragraph (b)(4) is amended by removing the words "least developed developing countries. (General Headnote 3(e)(vi), TSUS.)" and by adding, in their place, "least-developed beneficiary developing countries. (General Note 3(c)(ii)(B), HTSUS.)".

PART 132—QUOTAS

1. The authority citation for Part 132 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 132.6 [Amended]

2. Section 132.6 is amended by removing the words "General Note 3(c)" and by adding, in their place, the words "General Note 3(b)".

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for Part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.43 [Amended]

2. Section 134.43 is amended to read as follows:

(a) Paragraph (a) is amended by adding after "surgical instruments," the words "dental instruments, scientific and laboratory instruments,".

(b) Paragraph (b) is amended by adding after "Additional U.S. Note 411 the words ", Harmonized Tariff Schedule of the United States".

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 141.4 [Amended]

2. Section 141.4 is amended as follows:

(a) Paragraph (a) is amended by removing the words "General Note 5" and by adding in their place, the words "General Note 4".

(b) Paragraph (b) is revised to read as follows:

(b) Vessels (not including vessels classified in headings 8903 and 8907 and subheadings 8905.90.10 and 8906.00.10 or in Chapter 98, HTSUS,

such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note 1.

PART 142 – ENTRY PROCESS

1. The authority citation for Part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 142.6 [Amended]

2. Section 142.6, paragraph (a) (4), is amended by removing the first two sentences and by adding, in their place, the following: "The appropriate eight-digit subheading from the Harmonized Tariff Schedule of the United States. If the importer is uncertain of the appropriate subheading number, Customs shall assist him at his request."

PART 151 – EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for Part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624.

* * * * * * *

Section 151.42 also issued under 19 U.S.C. 1460, 1584, 1592; Section 151.46 also issued under 19 U.S.C. 1507;

* * * * * * *

§ 151.13 [Amended]

2. Section 151.13 is amended as follows:

(a) The table under paragraph (a)(1) is amended by removing from the Product column the word "naptha" and by adding, in its place, the word "naphtha".

(b) Paragraph (a)(2) is amended by removing the words "TAPPI, ICUMSA," from the last sentence before the table.

(c) Paragraph (a)(2) is further amended by removing the table and by adding, in its place, the following table:

HTSUS	Product	Characteristic (analysis method)
2707.10 through 2707.30 and 2902.20 through 2902.44	Benzene, toluene and xylene	Distillation characteristics (ASTM D 86) Xylene isomer content (ASTM D 2306 or other equivalent approved method) Percent composition by weight (ASTM D 2360, D 3797, D 3798, D 4492 or other equivalent approved methods)
2709	Crude petroleum	Water by distillation (ASTM D 4006 or other equivalent approved method) Sediment and water (ASTM D 96 or other equivalent approved method) API gravity (ASTM D 287 or other equivalent approved method) Sediment by extraction (ASTM D 473 or other equivalent approved method)

HTSUS	Product	Characteristic (analysis method)
2710 (various subheadings)	Such as, fuel oil, motor fuel, kerosene, naptha, and lubricating oils	Distillation characteristics (ASTM D 86 (ASTM D 86 or other equivalent approved method) Water by distillation (ASTM D 95 or other approved method) Sediment and water (ASTM D 96 or other equivalent approved method) API gravity (ASTM D 287 or other equivalent approved method) Reid vapor pressure (ASTM D 323 or or other equivalent approved method) Saybolt universal viscosity (ASTM D 445 and D 2161 or other equivalent approved methods) Sediment by extraction (ASTM D 473 or other equivalent approved method) Percent by weight sulfur (ASTM D 1266, ASTM D 2622, or ASTM D 3120, or other equivalent approved methods) Percent by weight lead (ASTM D 2547, ASTM D 2599, or ASTM D 3341, or other equivalent approved methods) Antiknock index (ASTM D 2699 (RON) and ASTM D 2700 (MON); see ASTM D 439)
Chapter 29 (various subheadings)	Organic compounds in bulk and in liquid form	Identity using HTSUS descriptions or common or IUPAC nomenclature Composition, giving percent by weight of each component. (Various methods published by ASTM, API, AOAC, USP, and similar organizations, may be used for identity and composition, e.g., ASTM D 2593 for butadiene, D 2192 for aldehydes, ketones, and similar substances. Approved methods involving gas or liquid chromatography, infrared spectroscopy, mass spectrometry, nuclear magnetic resonance spectrometry, and various "wet" chemical procedures and physical tests, e.g., refractive index, and melting point, may also be used.)

(d) Paragraph (g)(1) is amended by removing the words "the International Commission for Uniform Methods of Sugar Analysis (ICUMSA),".

3. Section 151.14 is revised to read as follows:

§ 151.14 Use of commercial laboratory tests in liquidation.

The "sediment and water" characteristic as set out in § 151.13(a)(2) and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between the value found by the commercial laboratory and the value found by the Customs labo-

ratory does not exceed 0.11 percent. If the difference exceeds this limit and the Customs-accredited commercial laboratory cannot establish that Customs is in error, then the Customs results shall be used.

4. Section 151.46 is revised to read as follows:

§ 151.46 Allowance for detectable moisture and impurities.

An allowance for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made in accordance with § 158.13 of this chapter.

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

1. The authority citation for Part 158 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, unless otherwise noted. Subpart C also issued under 19 U.S.C. 1563.

2. Section 158.13 is revised to read as follows:

§ 158.13 Allowance for moisture and impurities.

(a) *Application by importer.* (1) *Petroleum and petroleum products.* An application for an allowance in duties under section 507, Tariff Act of 1930, as amended (19 U.S.C. 1507), for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made by the importer on customs Form 4315. The application shall be filed with the district director within 10 days of the district director's receipt of the gauging report or within 10 days of Customs acceptance of the entry's invoice gauge.

(2) *Other products.* An application for an allowance in duties under 19 U.S.C. 1507 for products other than petroleum or petroleum products for excessive moisture or other impurities not usually found in or upon such or similar merchandise shall be made by the importer on Customs Form 4315. The application shall be filed with the district director within 10 days after the report of weight or gauge has been received by the district director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by district director.* If the district director is satisfied after any necessary investigation that the merchandise contains moisture or impurities as described in paragraph (a) of this section, he shall make allowance for the amount thereof in the liquidation of the entry.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for Part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624 . Subpart C also issued under 31 U.S.C. 372 . Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 159.7 [Amended]

2. Section 159.7(a) (1) is amended by removing the words "headings 2207 and 2208" and by adding, in their place, the words " headings 2203 through 2208".

CAROL HALLETT,
Commissioner of Customs.

Approved: September 26, 1990.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, October 2, 1990 (55 FR 40162)]

(T.D. 90–79)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: OCTOBER 1 THROUGH DECEMBER 31, 1990

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.831100
Austria	Schilling	0.091533
Belgium	Franc	0.031260
Brazil	Cruzado	N/A
Canada	Dollar	0.867378
China, P.R	Renimbi yuan	0.211242
Denmark	Krone	0.168634
Finland	Markka	0.270819
France	Franc	0.192382
Germany	Deutche mark	0.644454
Hong Kong	Dollar	0.128849
India	Rupee	0.055371
Iran	Rial	N/A
Ireland	Pound	1.730000
Italy	Lira	0.000859
Japan	Yen	0.007305
Malaysia	Dollar	0.370576
Mexico	Peso	N/A
Netherlands	Guilder	0.571363
New Zealand	Dollar	0.619000
Norway	Krone	0.166085

FOREIGN CURRENCIES—Quarterly rates of exchange: October1 through December 31, 1990 (continued):

Country	Name of currency	U.S. dollars
Philippines	Peso	N/A
Portugal	Escudo	$0.007271
Singapore	Dollar	0.567859
South Africa, Repblic of	Rand	0.389484
Spain	Peseta	0.010283
Sri Lnka	Rupee	0.024952
Sweden	Krona	0.174627
Switzerland	Franc	0.775494
Thailand	Baht (tical)	0.039479
United Kingdom	Pound	1.889000
Venezuela	Bolivar	N/A

(LIQ-03-01 S:NISD CIE)
Dated: October 1, 1990.

BARBARA MATARESE,
Acting Chief,
Customs Information Exchange.

(T.D. 90–80)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR SEPTEMBER 1990

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and other concerned pursuant to part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: September 3, 1990.

Greece drachma:

September 4, 1990	$0.006373
September 5, 1990	.006454
September 6, 1990	.006477
September 7, 1990	.006450
September 10, 1990	.006441
September 11, 1990	.006386
September 12, 1990	.006427
September 13, 1990	.006431
September 14, 1990	.006557
September 17, 1990	.006757
September 18, 1990	.006494
September 19, 1990	.006452
September 20, 1990	.006431
September 21, 1990	.006410
September 24, 1990	.006410
September 25, 1990	.006410
September 26, 1990	.006431
September 27, 1990	.006410
September 28, 1990	.006452

South Korea won:

September 4, 1990	$0.001396
September 5, 1990	.001395
September 6, 1990	.001393
September 7, 1990	.001392
September 10, 1990	.001391
September 11, 1990	.001391
September 12, 1990	.001393
September 13, 1990	.001392
September 14, 1990	.001391
September 17, 1990	.001390
September 18, 1990	.001390
September 19, 1990	.001392
September 20, 1990	.001393
September 21, 1990	.001393
September 24, 1990	.001393
September 25, 1990	.001395
September 26, 1990	.001395
September 27, 1990	.001396
September 28, 1990	.001397

Taiwan N.T. dollar:

September 4, 1990	$0.036637
September 5, 1990	.036630
September 6, 1990	.036629
September 7, 1990	.036629
September 10, 1990	.036615
September 11, 1990	.036617
September 12, 1990	.036616
September 13, 1990	.036625
September 14, 1990	.036633
September 17, 1990	.036633
September 18, 1990	.036631
September 19, 1990	.036641

FOREIGN CURRENCIES – Daily rates for countries not on quarterly list for September 1990 (continued):

Taiwan N.T. dollar:

September 20, 1990	$0.036634
September 21, 1990	.036639
September 24, 1990	.036637
September 25, 1990	.036617
September 26, 1990	.036631
September 27, 1990	.036629
September 28, 1990	N/A

(LIQ-03-01 S:NISD CIE)
Dated: October 1, 1990.

BARBARA MATARESE,
Acting Chief,
Customs Information Exchange.

(T.D. 90–81)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR SEPTEMBER 1990

The following rate of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 90–53 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.
Holiday: September 3, 1990.

Austria schilling:

September 5, 1990	$0.090785
September 6, 1990	.091199
September 7, 1990	.091054
September 14, 1990	.090868
September 17, 1990	.091283
September 18, 1990	.091785
September 19, 1990	.090621
September 24, 1990	.091158
September 25, 1990	.090909
September 26, 1990	.090559
September 27, 1990	.090375
September 28, 1990	.090682

FOREIGN CURRENCIES—Variances from quarterly rate for September 1990 (continued):

Belgium franc:

September 5, 1990	$0.031124
September 6, 1990	.031250
September 7, 1990	.031056
September 14, 1990	.031133
September 17, 1990	.031250
September 18, 1990	.031407
September 19, 1990	.030989
September 24, 1990	.031192
September 25, 1990	.031066
September 27, 1990	.030921
September 28, 1990	.030998

Denmark krone:

September 5, 1990	$0.166945
September 6, 1990	.167827
September 7, 1990	.166917
September 14, 1990	.167364
September 17, 1990	.168407
September 18, 1990	.169291
September 19, 1990	.167280
September 24, 1990	.168124
September 25, 1990	.167729
September 28, 1990	.167280

Finland markka:

September 5, 1990	$0.271003
September 6, 1990	272109
September 7, 1990	.270856
September 13, 1990	.270636
September 14, 1990	.270856
September 17, 1990	.271924
September 18, 1990	.272851

France franc:

September 5, 1990	$0.190949
September 6, 1990	.191608
September 7, 1990	.190585
September 13, 1990	.189573
September 14, 1990	.191186
September 17, 1990	.191589
September 18, 1990	.192864
September 19, 1990	.190404
September 21, 1990	.189412
September 24, 1990	.191902
September 25, 1990	.190985
September 26, 1990	.190078
September 27, 1990	.190223
September 28, 1990	.190730

FOREIGN CURRENCIES—Variances from quarterly rate for September 1990 (continued):

Germany deutsche mark:

September 5, 1990	$0.639591
September 6, 1990	.641849
September 7, 1990	.638570
September 14, 1990	.640287
September 17, 1990	.641849
September 18, 1990	.645911
September 19, 1990	.637349
September 24, 1990	.642343
September 25, 1990	.639386
September 26, 1990	.636132
September 27, 1990	.636740
September 28, 1990	.638366

Ireland pound:

September 5, 1990	$1.714000
September 6, 1990	1.724500
September 7, 1990	1.713000
September 13, 1990	1.704000
September 14, 1990	1.716000
September 17, 1990	1.723000
September 18, 1990	1.733500
September 19, 1990	1.710000
September 21, 1990	1.702000
September 24, 1990	1.720000
September 25, 1990	1.717000
September 26, 1990	1.710000
September 27, 1990	1.707000
September 28, 1990	1.714500

Japan yen:

September 4, 1990	$0.006966
September 5, 1990	.007058
September 6, 1990	.007090
September 7, 1990	.007138
September 10, 1990	.007184
September 11, 1990	.007151
Septebmer 12, 1990	.007262
September 13, 1990	.007281
September 14, 1990	.007317
September 17, 1990	.007299
September 18, 1990	.007273
September 19, 1990	.007267
September 20, 1990	.007303
September 21, 1990	.007305
September 24, 1990	.007348
September 25, 1990	.007279
September 26, 1990	.007285
September 27, 1990	.007227
September 28, 1990	.007232

FOREIGN CURRENCIES—Variances from quarterly rate for September 1990 (continued):

Netherlands guilder:

September 5, 1990	$0.567569
September 6, 1990	.569411
September 7, 1990	.566604
September 14, 1990	.568085
September 17, 1990	.569249
September 18, 1990	.573132
September 19, 1990	.565675
September 24, 1990	.569898
September 25, 1990	.567312
September 27, 1990	.564557
September 28, 1990	.566091

New Zealand dollar:

September 5, 1990	$0.624000
September 6, 1990	.625500
September 7, 1990	.623300
September 10, 1990	.620200
September 12, 1990	.621500
September 13, 1990	.624000
September 14, 1990	.627500
September 17, 1990	.623000
September 18, 1990	.625000
September 19, 1990	.622500
September 24, 1990	.621500
September 25, 1990	.620400

Norway krone:

September 6, 1990	$0.165824
September 14, 1990	.165344
September 17, 1990	.165893
September 18, 1990	.166597
September 24, 1990	.165289

Portugal escudo:

September 5, 1990	$0.007226
September 6, 1990	.007215
September 14, 1990	.007225
September 17, 1990	.007244
September 18, 1990	.007281
September 24, 1990	.007233

Sweden krona:

September 18, 1990	$0.175500

FOREIGN CURRENCIES—Variances from quarterly rate for September 1990 (continued):

Switzerland franc:

September 4, 1990	$0.759013
September 5, 1990	.770713
September 6, 1990	.769941
September 7, 1990	.766871
September 10, 1990	.758150
September 11, 1990	.751597
September 12, 1990	.755744
September 13, 1990	.761673
September 14, 1990	.774893
September 17, 1990	.777001
September 18, 1990	.779727
September 19, 1990	.765697
September 20, 1990	.757576
September 21, 1990	.756315
September 24, 1990	.770713
September 25, 1990	.768049
September 26, 1990	.762660
September 27, 1990	..764526
September 28, 1990	.769527

United Kingdom pound:

September 4, 1990	$1.875800
September 5, 1990	1.899000
September 6, 1990	1.908000
September 7, 1990	1.894000
September 10, 1990	1.855500
September 13, 1990	1.876700
September 14, 1990	1.898500
September 17, 1990	1.902500
September 18, 1990	1.918000
September 19, 1990	1.884700
September 20, 1990	1.868300
September 24, 1990	1.884000
September 25, 1990	1.876800
September 26, 1990	1.864000
September 27, 1990	1.871000
September 28, 1990	1.873500

(LIQ-03-01 S:NISD CIE)
Dated: October 1, 1990.

BARBARA MATARESE,
Acting Chief,
Customs Information Exchange.

U.S. Customs Service

General Notice

REDUCTION OF SERVICE AT PORTS OF ENTRY IN THE EVENT OF SEQUESTRATION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Customs may be required to initiate a number of emergency measures, including the reduction of hours of service at all ports of entry and the closing of certain small ports of entry, if its appropriations are sequestered pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. This document gives notice to the public that Customs may be required to reduce services unless Congress passes a deficit-reduction program.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of the Comptroller, (202) 566–5187

SUPPLEMENTARY INFORMATION:

Background

The Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) subjects all Federal agencies to sequestration of their appropriations in the event that Congress does not pass a deficit-reduction program.

Officers and employees of Federal agencies are legally prohibited from obligating funds in excess of the post-sequester amount. The Antideficiency Act provides criminal sanctions for exceeding an apportionment or over-obligating funds. Sections 1517(a) of title 31 prohibits officers and employees of the United States Government from making an obligation or expenditure exceeding an apportionment. An officer or employee of the U.S. government could be subject to criminal sanctions for making obligations or expenditures exceeding the amounts available in an appropriation fund. Section 1342 of title 31 prohibits officers or employees from volunteering to work.

In accordance with the above, in the event of a sequestration of funds, Customs, depending on the size and duration of the sequester, may need to either reduce or curtail hours of service. Among the emergency measures Customs anticipates that it may undertake are the reduction of

hours of services at ports of entry and the possible closing of certain ports of entry. Customs will notify the public of specific port closures or reductions by press releases both nationally and locally. As soon as Customs is aware that such measures are required, the Commissioner will inform members of major trade organizations of the reduced hours or closing of particular ports of entry through written notices and will hold meetings, if possible. Further notification will be made on the local level by district directors and port directors who will hold meetings with trade organizations and major users of their facilities to inform them of any reductions or closures.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: September 27, 1990.
NANCY L. WORTHINGTON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, October 2, 1990 (55 FR 40162)]

U.S. Court of Appeals for the Federal Circuit

SMITH CORONA CORP., PLAINTIFF/CROSS-APPELLANT *v.* UNITED STATES, DEFENDANT-APPELLEE, AND BROTHER INDUSTRIES, LTD., BROTHER INTERNATIONAL CORP., NAKAJIMA ALL CO., LTD.; CANON INC. AND CANON U.S.A., INC.;, SILVER SEIKO, LTD., SILVER REED AMERICA, INC.;, MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., KYUSHU MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., AND PANASONIC CO. AND PANASONIC INDUSTRIAL CO., DIVISIONS OF MATSUSHITA ELECTRIC OF AMERICA, DEFENDANTS-APPELLANTS

Appeal No. 89-1387, 89-1388, 89-1389, 89-1398, 89-1399, 89-1400

(Decided September 26, 1990)

Terence P. Stewart, Stewart & Stewart, of Washington, D.C., argued for plaintiff/cross-appellant. With him on the brief were *Eugene L. Stewart, James R. Cannon. Jr., John M. Breen and Lane S. Hurewitz.*

Velta Melnbrencis, Assistant Director, Commercial Litigation Branch, Department of Justice, of Washington, D.C., argued for defendant-appellee. With her on the brief were *Stuart E. Schiffer*, Acting Assistant Attorney General and *David M. Cohen*, Director. Also on the brief were *Wendell L. Willkie. II*, General Counsel, *Stephen J. Powell*, Chief Counsel for Import Administration and *Pamela Green*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, Washington, D.C., of counsel.

R. Sarah Compton, P.C., McDermott, Will & Emery, of Washington, D.C., argued for defendants-appellants, Nakajima All Co., Ltd. With her on the brief was *David J. Levine. Patrick F. O'Lear*, Tanaka Ritger & Middleton, of Washington, D.C., argued for defendants-appellants, Brother Industries, Ltd. and Brother International Corp. With him on the brief were *H. William Tanaka* and *Alice Mattice*. Also on the brief were *Harvey M. Applebaum, David R. Grace*, Covington & Burling, Washington, D.C., counsel for Canon Inc. and Canon U.S.A., Inc., *Stuart M. Rosen, Karin M. Burke* and *A. Paul Victor*, Weil, Gotshal & Manges, New York, New York, counsel for Matsushita Electric Industrial Co., Ltd., Panasonic Company and Panasonic Industrial Company, divisions of Matsushita Electric Corporation of America, *Christopher A. Dunn, Zygmunt Jablonski* and *Sarah C. Middleton*, Willkie, Farr & Gallagher, Washington, D.C., counsel for Silver Seiko, Ltd. and Silver Reed (U.S.A.), Inc.

Appealed from: U.S. Court of International Trade.
Judge AQUILINO.

Before NEWMAN, *Circuit Judge*, COWEN and BALDWIN, *Senior Circuit Judges.*

NEWMAN, *Circuit Judge.*

On this appeal taken by producers and importers of portable electric typewriters (PETs) with text memory, we affirm the decision of the

Court of International Trade[1] that these PETs are within the scope of the May 9, 1980 antidumping duty order issued by the United States Department of Commerce. On the cross-appeal of Smith Corona Corporation, we reverse the decision of the Court of International Trade refusing to suspend liquidation of the typewriters held to be subject to this order.

BACKGROUND

On April 9, 1979 Smith Corona filed an antidumping petition with respect to PETs from Japan, in accordance with the Antidumping Duty Act of 1921. The 1921 Act was superseded on January 1, 1980 by the Trade Agreements Act of 1979, Pub . L. No . 96-39 § 101, 93 Stat. 151, which transferred to the Department of Commerce responsibility for administering the antidumping provisions. The Treasury Department's tentative determination that the Japanese PETs were being sold at less than fair value was confirmed by the International Trade Administration of the Department of Commerce (ITA). *Portable Electric Typewriters from Japan*, 45 Fed. Reg. 18,416 (Dep't Comm. 1980). The International Trade Commission found that the domestic industry was materially injured, and by final order of May 9, 1980 antidumping duties were imposed on imported PETs. *Portable Electric Typewriters from Japan* 45 Fed. Reg. 30,618 (Dep't Comm. 1980) (final order). The final order was directed to "portable electric typewriters from Japan" which "are those provided for in item 676. 0510" of the Tariff Schedules of the United States (TSUS). 45 Fed. Reg. at 30,619.

The ITA determined in 1983 that electronic portable typewriters are covered by the order. *Portable Electric Typewriters from Japan*, 48 Fed. Reg. 7,768 (Dep't Comm. 1983).

On administrative review initiated on November 27, 1985 the ITA determined that PETs with text memory were excluded from the antidumping duty order.[2] *Portable Electric Typewriters from Japan*, 52 Fed. Reg. 1504 (Dep't Comm. 1987). Smith Corona appealed that determination to the Court of International Trade. 28 U.S.C. § 1581(c); 19 U.S.C. § 1516a(a)(2)(B)(vi) (providing that a "determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order" may be contested under § 1516a(a)(2)(A)).

The Court of International Trade reversed, on the basis that substantial evidence did not support the ITA's ruling. *Smith Corona Corp v. United States*, 678 F. Supp. 285 (Ct. Int'l Trade 1987). The ITA held, after a second remand from the court, that PETs with text memory were included in the antidumping order. *Portable Electric Typewriters from Japan*, No. 88-127 (Dep't Comm. Nov. 23, 1988). On appeal from this

[1] *Smith Corona Corp. v. United States*, 706 F. Supp. 906 (Ct. Int'l Trade 1989).

[2] The review included the question of whether PETs with calculating mechanisms are within the scope of the final order. That issue is not before this court.

holding the Court of International Trade affirmed the ITA's ruling, but refused to require the suspension of liquidation pending appeal to this court. *Smith Corona*, 706 F. Supp. 908. This appeal and cross-appeal followed.

I

The appellant producers and importers assert that PETs with text memory are outside the scope of the final antidumping duty order of 1980.

A

The class or kind of merchandise encompassed by a final antidumping order is determined by the order, which is interpreted with the aid of the antidumping petition, the factual findings and legal conclusions adduced from the administrative investigations, and the preliminary order. *Alsthom Atlantique v. United States*, 4 Fed. Cir. (T) 71, 787 F.2d 565 (Fed. Cir. 1986); *see generally Royal Business Machs. Inc. v. United States*, 507 F. Supp. 1007 (Ct. Int'l Trade 1980), *aff'd*, 669 F.2d 692 (CCPA 1982). Although the scope of a final order may be clarified, it can not be changed in a way contrary to its terms. *See Alsthom Atlantique*, 787 F.2d at 571, 4 Fed. Cir. (T) at 78.

The antidumping petition filed by Smith Corona in 1979, in accordance with 19 C.F.R. § 153.27(a)(2) (1979), defined the goods as "all portable electric typewriters, whether utilizing typebars or single elements, and whether fully electric with powered carriage return, and whether with conventional ribbons or with cartridge or cassette ribbon." The tariff classification was identified as TSUS item 676.0510. Schedule 6, Part 4, Subpart G, of the TSUS contains the following classification:

Item	Stat. Suffix	Articles
		Typewriters not incorporating a calculating mechanism:
676.05		Non-automatic with hand-operated keyboard
		Portable:
	10	Electric
	30	Nonelectric
		Other:
	40	Electric
	60	Non-electric

At the time of the investigation all imported portable electric typewriters were encompassed by TSUS 676.0510[3] Although typewriters with text memory were found to have existed at the time of the antidumping inves-

[3]Pursuant to the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1147, 1153, effective January 1, 1989, the Harmonized Tariff Schedule (HTS) replaced the TSUS. HTS Item 8469.10 reads: "Automatic typewriters and word processing machines". Item 8469.21 reads: "Other typewriters, electric: Weighing not more than 12 kg, excluding case."

tigation, they were of large size and not portable, and therefore not included in the investigation. *Portable Electric Typewriters from Japan*, No. 87-145, slip op. at 3 (Dep't Comm. March 18, 1988). With advances in technology, text memory capability became incorporated in portable electronic typewriters imported after the date of the order. It is the status of these typewriters that is at issue.

In determining the status of products that have been modified since the issuance of an order, the initial inquiry is whether the products were specifically included within the order. *See Alsthom Atlantique*, 4 Fed. Cir. (T) at 78, 787 F.2d at 571; *Royal Business Machs., supra*. If the final order did not clearly include or exclude the modified products, then guidance as to the intended scope of the order may be sought by application of the criteria set forth in *Diversified Products v. United States*, 572 F. Supp. 883 (Ct. Int'l Trade 1983). The Court of International Trade, reviewing the order in light of the entirety of the administrative investigations and determinations, held that the text memory PET's were included within the scope of the final order.

The Court of International Trade considered the argument of the importers/producers that because text memory PETs were classified, upon their importation after the final order was issued, under a tariff classification other than 676.0510, these typewriters are expressly excluded from the final order. A similar question had arisen, in connection with the same final order, applied to a Japanese electronic typewriter model known as the Royal "Administrator". In that case, after issuance of the final order the Customs Service reclassified the "Administrator" from TSUS 676.0510 (Portable: Electric) to TSUS 676.0540 (Other: Electric), and the manufacturer petitioned to exclude the "Administrator" from the final order based on the reference in the order to TSUS 676.0510. The Court of International Trade rejected this argument, stating that classification under the antidumping law need not match the Customs classification, and that factors in addition to the TSUS classification are to be considered. *Royal Business Machs.*, 507 F. Supp. at 1014. The separate classification of large size, non-portable typewriters with text memory, at the time of the investigation, and their removal from the scope of the order because they were not portable, does not *ipso facto* remove portable text memory typewriters from the scope of the order. The Court of International Trade noted in *Royal Business Machs.*:

> The determinations under the antidumping law may properly result in the creation of classes which do not correspond to classifications found in the tariff schedules or may define or modify a known classification in a manner not contemplated or desired by the Customs Service. Within the context of an antidumping proceeding the administering agency, at the proper time, can define the class in its terms.

Id. at 1014 n.18.

As discussed in *Royal Business Machs.*, the investigation leading to the 1980 order was directed to portable electric typewriters broadly. The an-

tidumping petition defined the goods as "all portable electric typewriters", and at the time of the investigation and final order all imported commercial portable electric typewriters were classified under TSUS 676.0510. The Court of International Trade correctly held that the reference to TSUS 676.0510 in the final order is not dispositive, and that a change in tariff classification after the investigation and order does not of itself change the intended scope of the order, although it is a factor to be considered, along with all factors pertinent to the issue of the intended scope of the order.

B

The Court of International Trade stated that "in every scope determination involving a new product, the ITA should examine the product in light of the *Diversified Products* criteria to determine whether the product is of the class or kind of merchandise contemplated by the pertinent antidumping finding." *Kyowa Gas Chemical Indus. v. United States*, 7 CIT 138 (1984); *see Ipso Inc. v. United States*, 715 F. Supp. 1104, 1107 n.3 (Ct. Int'l Trade 1989); *Kyowa Gas Chemical Indus. v. United States*, 7 CIT 311 (1984). These criteria are "the general physical characteristics of the merchandise, the expectation of the ultimate purchasers, the channels of trade in which the merchandise moves, the ultimate use of the merchandise, and cost." *Diversified Products*, 572 F. Supp. at 888 (citations omitted). We agree that these criteria are a sound approach to determining the status of products that have been modified since the time of the investigation and final order.

These criteria were considered by the Court of International Trade, in turn reviewing the findings of the ITA. Starting with the general physical characteristics of the goods, the PETs with text memory are described as having a space for display of varying number of lines of text, depending on the model, and having a few additional keys, again depending on the model and the features provided. It was undisputed that the imported typewriters generally look like typewriters, and are small enough in size and weight as to be portable. *Smith Corona*, 698 F. Supp. at 249; *Portable Electric Typewriters from Japan*, slip. op. 87-145 at 4.

The additional features of text memory PETs enable the operator to store, edit, and retype text from electronic memory. These capabilities, the Court of International Trade found, do not change the primary function as portable typewriters: "Each machine is still dedicated to producing on paper printed letters and other characters as a substitute for handwritten ones through manual use of an electrically-actuated keyboard contained in a unit of such size and weight as to be susceptible to single-hand portage." *Smith Corona*, 698 F. Supp. at 249. We discern no error in the Court of International Trade's conclusion that "[w]hile such components constitute physical differences, they do not add up to a different class or kind of merchandise." *Id.*

Nor has reversible error been shown in the Court of International Trade's findings to the effect that the expectations are similar, of consumers of PETs with and without text memory. Like the PETs of 1979,

PETs with text memory are primarily used at home and by students, and are not for commercial use. The record showed that to consumers seeking a portable electric typewriter the addition of text memory was viewed as an attractive feature, not a distinguishing characteristic, and that text memory PETs were viewed as typewriters, not as computers.

There is no dispute that the channels of trade for PET's with and without text memory are identical. They are sold in the same retail stores, and are advertised as portable electric typewriters. The cost of PETs containing text memory is not significantly greater than the cost for PETs without text memory. The court found that relative cost does not distinguish the machines before us.

Reversible error has not been shown in these findings and conclusions of the Court of International Trade. 19 U.S.C. § 1516a(b)(1)(B); *see Atlantic Sugar. Ltd. v. United States*, 744 F.2d 1556, 1559 n.10, 2 Fed. Cir. (T) 130, 133 n.10 (Fed. Cir. 1984) (review of Court of International Trade review of the findings and conclusions of the ITA); *Smith-Corona Group v. United States*, 713 F.2d 1568, 1583 (Fed. Cir. 1983).

The holding that PETs with text memory are within the scope of the May 9, 1980 antidumping duty order is affirmed.

II

The Court of International Trade withheld publication of notice of its decision, and denied Smith Corona's motion to suspend liquidation pending appeal to the Federal Circuit. The court determined that 19 U.S.C. § 1673, which provides for the imposition of antidumping duties, is silent on the subject of liquidation; and that sections1673b(d) and 1673d(C)(l)(B) of that title mandate suspension only after final determination of sales at less than fair value, which determination, according to the court, had not occurred. The court erred in its statutory reading and application.

Liquidation of goods is provided for in 19 U.S.C. § 1516a(c)(1), which requires prompt publication of notice of the court's decision. The statute states:

> (1) Liquidation in accordance with determination
>
> Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section [relating to an existing order] shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. *Such notice of a decision shall be published within ten days* from the date of the issuance of the court decision. [Emphasis added.]

This provision makes clear that the decision of the Court of International Trade, or of the Federal Circuit, is of controlling effect when rendered, and that each such decision must be published within ten days after its issuance. In *Timken v. United States*, 893 F.2d 337 (Fed. Cir. 1990) we held that § 1516a(c)(1) requires publication of notice of a contrary decision of the Court of International Trade, and requires suspension of liquidation upon publication of the notice. *Id.* at 340.

Such suspension is not automatically lifted when the decision of the Court of International Trade is appealed to the Federal Circuit. Suspension of liquidation continues until a "conclusive" court decision is reached, *i.e.*, a decision that is not subject to further appeal or collateral attack. 19 U.S.C. § 1516a(e); *Timken*, 893 F.2d at 339.

The February 3, 1989 decision of the Court of International Trade was a decision within the scope and meaning of § 1516a(c)(1). Notice of the Court of International Trade decision should have been published within ten days thereafter, and liquidation should have been suspended. The court's refusal to order such action is reversed.

COSTS

Costs on appeal and cross-appeal to Smith-Corona.

AFFIRMED IN PART, REVERSED IN PART

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

James L. Watson
Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave

Senior Judges

Morgan Ford

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 90–95)

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., MATSUSHITA ELECTRONICS CORP., MATSUSHITA ELECTRIC CORP. OF AMERICA AND HOSHIDEN ELECTRONICS CO., LTD., PLAINTIFFS *v.* UNITED STATES AND U.S. INTERNATIONAL TRADE COMMISSION, DEFENDANTS, TANDY CORP., DEFENDANT-INTERVENOR

Court No. 90-08-00391

Plaintiffs seek a preliminary injunction to remove in-house counsel of Tandy Corporation from the list of those eligible under an administrative protective order to access the confidential record in the underlying antidumping duty action. Plaintiffs argue that the in-house counsel is involved in competitive decisionmaking and as such, is ineligible to access confidential documents.

Held: Plaintiffs have met their burden of showing that counsel is involved in competitive decisionmaking. Accordingly, plaintiffs' motion for a preliminary injunction is granted and the ITC is directed to deny access to business proprietary information in USITC Inv. No. 731-TA-469 to Tandy's in-house counsel.

[Preliminary injunction granted.]

(Dated September 25, 1990)

Willkie Farr & Gallagher (William H. Barringer, William J. Clinton and Daniel L. Porter); Adduci, Mastriani, Meeks & Schill (Louis S. Mastriani) for plaintiffs.

Lyn M. Schlitt, General Counsel, *Wayne Herrington,* Acting Assistant General Counsel, U.S. International Trade Commission, Office of the General Counsel (*George Thompson*) for defendants.

Cushman,. Darby & Cushman (Arthur Wineburg and *Marcia H. Sundeen)* for defendant-intervenor.

MEMORANDUM OPINION

TSOUCALAS, *Judge*: Plaintiffs, Matsushita Electric Industrial Co., Ltd., Matsushita Electronics Corporation, Matsushita Electric Corporation of America ("Matsushita") and Hoshiden Electronics Co., Ltd. ("Hoshiden"), ask the Court pursuant to Rules 7(f) and 65(a) of the rules of this Court to grant a preliminary injunction removing the in-house counsel for Tandy Corporation ("Tandy") from the list of those with approved access to all confidential business proprietary information submitted to or released by the International Trade Commission ("ITC" or "Commission") during the antidumping duty investigation of imports of high information flat panel displays and subassemblies thereof. USITC Inv. No. 731–TA–469. Plaintiffs assert that the in-house counsel, Mr. Herschel Winn, is involved in competitive decisionmaking at Tandy and therefore is ineligible to access confidential information.

Mr. Winn applied for an administrative protective order ("APO") pursuant to 19 U.S.C. § 1677f(c)(1988) on July 31, 1990. In his application, Mr. Winn certified that, in his position as General Counsel at Tandy, he is not involved in competitive decisionmaking. *See* Exhibit A to *Intervenor Tandy Corporation's Opposition to Plaintiff's Motion for Preliminary Injunction ("Intervenor's Memorandum")*. Satisfied that Mr. Winn was not so involved, the Commission granted the APO request. Plaintiffs, who filed written objections to Mr. Winn's application, now seek a court order removing his name from the list of those eligible to access business proprietary information from the ITC.

A preliminary injunction will issue from this Court only if plaintiffs prove that four conditions have been met. Plaintiffs must show (1) that there is a likelihood of success on the merits; (2) that they will be immediately and irreparably harmed; (3) that the public interest would be better served by the issuance of the injunction; and (4) that the balance of the hardships on all the parties favors the plaintiffs. *Zenith Radio Corp. v. United States,* 710 F.2d 806, 809 (Fed. Cir. 1983); *S.J. Stile Assoc. Ltd. v. Snyder,* 68 CCPA 27, 30, 646 F.2d 522, 525 (1981); *PPG Indus., Inc. v. United States,* 11 CIT 5, 6 (1987).

I. *Likelihood of Success on the Merits:*

For plaintiffs to ultimately succeed on the merits, that is, to have the ITC's action invalidated, they must show that the action of the ITC in granting the APO to Mr. Winn was arbitrary and capricious, or an abuse of discretion. Plaintiffs claim that the Commission did not follow either its own regulations or the relevant statute and thus its approval of the APO application was arbitrary and capricious. *Memorandum in Support of Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction at 3 ("Plaintiffs' Memorandum").*

The relevant statute was amended by the Omnibus Trade and Competitiveness Act of 1988 ("Trade Act") which states that

> the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding.

19 U.S.C. § 1677f(c)(1)(A) (1988). The legislative history to this Act makes clear that those parties authorized to have access to business proprietary information include retained counsel and consultants or other experts. H.R. Rep. No. 576, 100th Cong., 2d Sess. 623 (1988). The conference report distinguishes in-house counsel, however, and states that in "determining whether *in-house* counsel may properly be given access, Commerce and the ITC should be guided by the factors enumerated in *United States Steel Corp. v. United States,* 730 F.2d 1465 (Fed. Cir. 1984)." *Id.*

In *U.S. Steel,* our appellate court held that, in deciding whether counsel may receive access to confidential information, the agencies and the court may not distinguish solely on the basis of whether counsel are in-house or retained. 730 F.2d at 1468. The court reasoned that in-house counsel are just as bound by the Code of Professional Responsibility as are retained counsel and should not be denied access simply because of their status as in-house counsel. They may be denied access only where it is determined that they are "involved in competitive decisionmaking." *Id.*[1]

The Commission has adopted the court's standard in its regulations. 19 C.F.R. § 207.7(a)(3) defines who may file an application for access to confidential information. Authorized applicants under this regulation may include the in-house attorney for an interested party "if the attorney is not involved in competitive decisionmaking as defined in *U.S. Steel.*" 19 C.F.R. § 207.7(a)(3)(ii) (1990). Competitive decisionmaking was defined by the court as "counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor." *U.S. Steel,* 730 F.2d at 1468.

Attached to Mr. Winn's APO application was a letter to the ITC written on Tandy Corporation stationery. Though he identified himself as General Counsel, his stationery listed his titles as "Senior Vice President and Secretary." *See* Exhibit A of *Intervenor's Memorandum.* Mr. Winn stated that his duties as General Counsel include supervising Tandy's staff of attorneys, who institute and defend lawsuits on behalf of the corporation. They also prepare contracts and handle securities and labor matters. He stated in the letter that he is not involved in decisions of pricing and the technical design of a product." *Id.*

Following plaintiffs' written opposition, Mr. Winn submitted another letter to the Commission, in which he elaborated on his responsibilities and stated repeatedly that he does not engage in competitive decisionmaking at Tandy. *See* Letter of Herschel Winn to Kenneth R. Mason (August 7, 1990), Exhibit C of *Intervenor's Memorandum.* He wrote that, in his position as Senior Vice President and Secretary, he reviews securities filings, employee benefit plans and stock purchase plans, and he keeps the minutes of the Board of Directors of Tandy. *Id.* Mr. Winn also asserted that he (or someone in his office) attends Corporate Staff Meetings where "results of operations and financial reports" are reviewed. *Id.* Additionally, he attends Radio Shack Retail Store Meetings where the current state of affairs of Radio Shack stores is examined. Mr. Winn stated that at none of these meetings are the issues of "pricing, product design, etc." discussed.

The Court finds that Mr. Winn's stated responsibilities at Tandy as Senior Vice President and Secretary constitute involvement in the com-

[1] Of course, in-house counsel may also be denied access if there is reason to believe deliberate disclosure is likely to occur, but that applies to anyone being considered for access, not just in-house counsel.

petitive decisionmaking process. His attendance at Corporate Staff, Radio Shack and Tandy Board of Directors meetings necessarily exposes Mr. Winn to the exchange of ideas regarding policies that are inherent in all such meetings. Though the Court has no reason to, and does not here, doubt Mr. Winn's veracity, the Court believes that the ITC has too narrowly interpreted the directives of the Federal Circuit in *U.S. Steel* and its own regulations.

While an in-house counsel is not, *per se*, involved in competitive decisionmaking, Mr. Winn's established positions as Senior Vice President and Secretary do not adequately isolate him from the policymaking elements of the corporation so as to render the risk of inadvertent disclosure minimal. Though there is no reason to believe Mr. Winn would deliberately disclose confidential data about Tandy's competitors to those involved in day-to-day pricing and policy decisions, his regular contact with such executives in the context of what necessarily are competitive decisionmaking meetings creates "an unacceptable opportunity for inadvertent disclosure" and renders him ineligible to receive access to the business proprietary information in this case. *See U.S. Steel*, 730 F.2d at 1468.[2]

Consequently, the Court finds that plaintiffs have a substantial likelihood of success on the merits and the first prong of the test for a preliminary injunction is satisfied.

II. *Immediate and Irreparable Harm:*

To establish immediate and irreparable harm, plaintiffs must show that there is a "viable threat of serious harm which cannot be undone." *S.J. Stile*, 68 CCPA at 30, 646 F.2d at 525. Plaintiffs contend that if confidential information is disclosed to Mr. Winn, plaintiffs would lose their right to have the ITC's action reviewed by the court, because the case would be moot as to the disclosed information. Since the information cannot be "undisclosed," the court would be unable to redress plaintiffs' grievance and the action would be dismissed as moot, even if the court agreed that the Commission's action was arbitrary and capricious.

A number of decisions of this Court and our appellate court have held that the threat of mootness which would preclude judicial review constitutes irreparable harm. *Zenith*, 710 F.2d at 810; *Algoma Steel Corp. v. United States*, 12 CIT____, ____, 696 F. Supp. 656, 658 (1988); *British Steel Corp. v. United States*, 10 CIT 716, 717, 649 F. Supp. 78, 80 (1986). Clearly, if Mr. Winn receives the proprietary information, plaintiffs' action would be mooted. Any relief subsequently granted by the Court would be pointless. Thus plaintiffs risk immediate and irreparable harm if the injunction is not granted.

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[2] Furthermore, this Court has acknowledged that, unlike retained attorneys, in-house counsel "might be susceptible to demands of their corporate employers to violate a protective order." *D & L Supply Co. v. United States*, 12 CIT__, __, 693 F. Supp. 1179, 1182 (1988).

III. *Balance of Hardships:*

The hardships which will befall plaintiffs if their motion fails are the exposure of confidential information to someone who is likely to be found to be involved in competitive decisionmaking at a competing corporation and the inability to get adequate relief if they ultimately succeed on the merits. Tandy stands to be deprived of the benefits of having its in-house counsel participate in the preparation of the case with full information, including proprietary information. However, Tandy already has retained able counsel who have been participating in the proceedings throughout the case and are well suited to capably protect Tandy's interests.[3] The balance of hardships, therefore, clearly favors the plaintiffs.

IV. *Public Interest:*

There is no question that there is a strong public interest favoring full disclosure of information relevant to the underlying proceedings. *See Komatsu Forklift Mfg. Co. of U.S.A. v. United States*, 13 CIT____, ____, 717 F. Supp. 843, 846 (1989). However, there is also a strong public interest in denying access to confidential information to those who are likely to disclose, whether deliberately or not, that information in the context of competitive decisionmaking. For this reason, the Court finds that the public interest is best served by granting the injunction.

CONCLUSION

Plaintiffs have met the burden of establishing that they have a substantial likelihood of success on the merits, that, if a preliminary injunction is not issued, they will suffer irreparable harm and that the balance of hardships and public interest are in their favor. Accordingly, plaintiffs' motion for a preliminary injunction denying Mr. Herschel Winn access to plaintiffs' business proprietary information is granted and the ITC is directed to strike Mr. Winn's name from the list of those eligible to receive confidential information in USITC Inv. No. 731-TA-469.

---

[3] Unlike the situation in *U.S. steel*, in this case Tandy would not have to find new outside attorneys to replace its in-house counsel, which the Court recognizes "would create an extreme and unnecessary hardship." *U.S. Steel*, 730 F.2d at 1468.

(Slip Op. 90–96)

KENNETH C. MERTZ, PLAINTIFF *v.* U.S. CUSTOMS SERVICE, DEFENDANT

Court No. 89-11-00639

MEMORANDUM OPINION AND ORDER

[Plaintiff's motion denied.]

(Dated October 1, 1990)

Kenneth C. Mertz, pro se.

Stuart M. Gerson, Assistant Attorney General; *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch (*Barbara M. Epstein* on the motion), for the defendant.

RE, *Chief Judge*: Plaintiff moves for an order permitting him to proceed with this action *in forma pauperis* and for appointment of counsel pro bono, pursuant to 28 U.S.C. § 1915(d). The defendant takes no position on plaintiff's motion and defers to the discretion of the court.

A court of the United States may permit a party to proceed with litigation *in forma pauperis*, that is, "without prepayment of fees and costs or security," if the party shows by affidavit the inability to pay the costs or to give security. *See* 28 U.S.C. § 1915(a) (1988).

Section 1915(d) also provides that "[t]he court may request an attorney to represent any such person unable to employ counsel. * * *" Counsel who are appointed to represent litigants who sue *in forma pauperis* contribute their services without charge.

In support of his allegation of poverty, plaintiff submits an affidavit showing that he is presently employed at an annual salary of approximately $30,000. The affidavit also shows that he owns stocks and bonds with an approximate value of $15,000, a house and lot with a value of $46,000, and an automobile valued at $12,000.

Although section 1915 does not require a party seeking to proceed *in forma pauperis* to prove destitution, plaintiff has not demonstrated the degree of poverty found necessary in cases that have granted in *forma pauperis* status. *See, e.g., Potnick v. Eastern State Hosp.*, 701 F.2d 243 (2nd Cir. 1983), in which the district court denied the plaintiff's motion to proceed *in forma pauperis*. In reversing, the appellate court noted that the plaintiff had "a monthly income of $181 in welfare benefits, $41 in food stamps, a checking account balance of $59.77 and a 1974 Buick on which he owed $3600." *Id.* at 244.

In *Sears Roebuck & Co. v. Charles W. Sears Real Estate, Inc.*, 865 F.2d 22 (2nd Cir. 1988), the district court denied the defendant's motion to proceed *in forma pauperis*. The district court stated that the pro se defendant, who estimated his net income at approximately $20,000, had failed to establish indigence. *See id.* at 23.

On appeal, in affirming, the Court of Appeals for the Second Circuit concluded that the defendant "has not demonstrated the poverty found in cases, such as *Potnick*, that have granted *in forma pauperis* status."

See id. The appellate court held that, since section 1915(d) allows appointment of counsel only when a litigant is indigent, the district court did not err in denying the defendant *in forma pauperis* status. Hence, the Court of Appeals for the Second Circuit affirmed the decision of the district court.

In this case, plaintiff's affidavit negates the degree of poverty or indigence necessary to proceed *in forma pauperis.* Hence, plaintiff's motion to proceed *in forma pauperis,* and for appointment of counsel pro bono, is denied.

(Slip Op. 90–97)

KOYO SEIKO CO., LTD. AND KOYO CORP. OF U.S.A. PLAINTIFFS *v.* UNITED STATES; DEPARTMENT OF COMMERCE; ROBERT A. MOSBACHER, SECRETARY OF COMMERCE, DEFENDANTS, AND TIMKEN CO., DEFENDANT-INTERVENOR

Court No. 87-10-01012

Plaintiffs seek remand of ITA determination to correct certain clerical errors.

Held: The Court is reluctant to affirm a determination that is founded upon a factually erroneous administrative record.

[Plaintiffs' motion for judgment on the agency record on Count IV(5)(i) of its amended complaint granted.]

(Dated October 3, 1990)

Tanaka Ritger & Middleton (H. William Tanaka, Patrick F. O'Leary, Alice L. Mattice and *John J. Kenkel)* for plaintiffs.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Velta A. Melnbrencis*); of counsel: *Stephanie J. Mitchell,* Attorney-Advisor, Office of Chief Counsel for Import Administration, Department of Commerce, for defendants.

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr.* and *John M. Breen*); of counsel: *Scott A. Scherff,* Senior Corporate Counsel, The Timken Company, for defendant-intervenor.

OPINION

TSOUCALAS, *Judge*: This action constitutes yet another challenge to Commerce's final antidumping determination of tapered roller bearings ("TRBs") from Japan. *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof Finished and Unfinished. From Japan,* 52 Fed. Reg. 30,700 (Aug. 17, 1987), *amended,* 52 Fed. Reg. 47,955 (Dec. 17, 1987). Pursuant to Rules 56 .1 and 56.1 (f) of the Rules of this Court, plaintiffs KOYO SEIKO CO., LTD. and KOYO CORPORATION of U.S.A. (collectively KOYO) herein move for partial judgment on the agency record as to Count IV(5) (i) of their amended complaint. The aforementioned count charges Commerce with unlawfully refusing plaintiffs' request for correction of certain clerical errors present in the computer data it submitted to be utilized by the International Trade Administration (ITA) in preparing its final determination.

Plaintiffs maintain that immediate resolution of this issue would serve judicial economy as the need for further litigation may well be mitigated. In opposition to said motion defendants and defendant-intervenor join, insisting that Commerce was not required to correct KOYO's clerical errors after the final determination was issued.

BACKGROUND

In 1987, responding to a petition from the domestic industry, Commerce initiated an antidumping investigation of TRBs and parts thereof imported from Japan. After an extended investigatory period, Commerce issued its final affirmative dumping determination which assessed an estimated dumping margin of 70.44% for KOYO. 52 Fed. Reg. 30,709. It soon became apparent, however, that the determination was tainted by numerous ministerial errors. Consequently, the ITA informed all interested parties that they would have two weeks to review and comment on the errors contained in the final determination after which an amended determination would be published. Petitioner as well as respondents to the investigation (including plaintiffs herein) addressed a series of clerical and computational errors committed by the ITA. In addition, plaintiffs informed Commerce that a review of the sales listing computer input tapes, which it (KOYO) had submitted to the ITA for calculation of their dumping margin, revealed various transcription errors. Within the allotted two weeks, plaintiffs sought correction of both the errors in its submissions and those for which the ITA was solely responsible, noting that correction of the clerical errors would not require further investigation as Commerce was already in possession of an accurate hard copy of U.S. sales figures in the administrative record.[1]

Throughout the post-final determination proceedings KOYO maintained that the transcription errors were committed by the company they commissioned to assure that their hard copy data was properly transcribed to a computer format compatible with that used by the ITA. This claim is supported by Commerce's receipt of a communication from Mr. Joseph L. Meier, President of Yield Data Services, acknowledging that his company was retained by plaintiffs to verify the accuracy of the sales listing database and that it was during this procedure that the subject errors occurred. *Plaintiffs' Memorandum in Support of Motion for Partial Judgment on the Agency Record* ("Plaintiffs' Memo") at Appendix I.

Upon evaluation of all comments, the ITA subsequently issued an amended determination reflecting the correction of the errors which had resulted exclusively from agency action. Notwithstanding KOYO's entreaties, the ITA failed to correct the errors on plaintiffs' computer input tapes. Plaintiffs' dumping margin under the amended determination was estimated at 36.21%. 52 Fed. Reg. 47,955.

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[1] Commerce requires all respondents to submit hard copies of all the information contained in their respective computer tape submissions for verification purposes. Defendants' Memorandum in Opposition to Plaintiffs' Motion for Partial Judgment on the Agency Record ("Defendants' Memo") at 8.

At no time have defendants disputed plaintiffs' allegations that the errors they sought to have corrected were purely clerical and would not require further examination of the facts, or that their correction would significantly reduce KOYO's dumping margin.[2] Commerce simply maintains that the ITA exercised proper discretion in denying plaintiffs' request for correction of the clerical errors because corrected copies of the computer tapes were not submitted before the final determination was issued. *Defendants' Memo* at 2-3.

Hence, plaintiffs seek to have these clerical errors immediately corrected. For the reasons stated herein, the Court remands to the ITA for correction, the clerical and transcription errors on plaintiffs' U.S. sales listing computer input tapes.

Discussion

There can be no doubt that Congress intended final determinations to be precisely that. Indeed, if determinations were constantly subject to amendment, "it would be difficult to answer the question as to when a *final* determination would ever be made." *Badger-Powhatan, Div. of Figgie Int'l, Inc. v. United States,* 10 CIT 241, 245, 633 F. Supp. 1364, 1369 (1986) (emphasis in original). The Court further acknowledges that the imposed deadlines must be strictly adhered to if Commerce is to conduct antidumping investigations effectively.

This notwithstanding, it is axiomatic that fair and accurate determinations are fundamental to the proper administration of our dumping laws. Consequently, courts have uniformly authorized the correction of any clerical errors which would affect the accuracy of a determination. *See e.g., Ipsco Inc. v. United States,* 14 CIT ____, Slip Op. 90–37 (April 16, 1990); *Asociacion Colombiana de Exportadores de Flores v. United States,* 13 CIT ____, 704 F. Supp. 1114 (1989); *Daewoo Elec. Co. v. United States,* 13 CIT ____, 712 F. Supp. 931 (1989); *Borlem. S.A. Empreedimentos Industriais v. United States,* 12 CIT ____, Slip-Op. 88-77 (June 15, 1988); *Serampore Indus., Pvt. Ltd. v. United States,* 12 CIT ____, 696 F. Supp. 665 (1988); *Gilmore Steel Corp. v. United States,* 7 CIT 219, 585 F. Supp. 670 (1984); *Atlantic Sugar, Ltd. v. United States,* 1 CIT 211, 511 F. Supp. 819 (1981).

In fact, this court, in *Florex v. United States,* acknowledged that the collection of actual information is at the heart of the ITA's investigations. 13 CIT ____, ____, 705 F. Supp. 582, 588 (1989). Furthermore, in *Serampore,* a case recently before the court with circumstances analogous to the instant action, it was determined that computer input errors caused by respondent's submissions should be corrected in the interest of accuracy. 12 CIT ____, 696 F. Supp. 665.

A legislative preference for determinations that are factually correct is further borne out by the recent amendments to title 19, as contained in

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[2] With reference to plaintiffs' estimation of what effect the corrections would have on their dumping margin, defendants make no mention other than to state that plaintiffs' dumping margin would not be eliminated. Defendants' Memo at 16, n.16. The Court therefore presumes that defendants concede that KOYO'S dumping margin would be substantially reduced by the correction of the clerical errors at issue.

§ 1333 of The Omnibus Trade and Competitiveness Act of 1988 (OTCA).[3] Therein Congress provides for the correction of ministerial errors discovered in final determinations within a reasonable period of time. It is possible to surmise then, that affirming a final determination *known to be based on incorrect data* would not only perpetuate the error, but would also be contrary to legislative intent.

Furthermore, "[j]udicial authority supports granting a request for remand if it fosters and promotes fundamental fairness." *Alhambra Foundry Co. v. United States*, 12 CIT ___, ___, 685 F. Supp. 1252, 1262 (1988) (citing *ILWU Local 142 v. Donovan*, 12 CIT ___, ___, 678 F. Supp. 307, 310 (1988)). As this court has previously recognized, failure to reopen a determination which is known to be based on erroneous factual information that would clearly mandate a change in result would itself be arbitrary and capricious. *Timken Co. v. United States*, 7 CIT 319, 320 (1984). The Court therefore finds it necessary to balance the preference for accurate determinations with the necessity for meaningful final determinations.

In this case, there is no evidence that plaintiffs colluded to defraud Commerce. To the contrary, it appears from the record that KOYO notified Commerce of the errors promptly upon their discovery. Moreover, what is most persuasive to the Court is that the use of the incorrect data resulted in such absurd results as would certainly alert the ITA analysts to a discrepancy.[4] In addition, Commerce's failure to provide a compelling explanation for its inept handling of what should have been a routine matter is baffling to the Court. Finally, the fact that Commerce was in possession of a true hard copy of the information at all times, leads the Court to only one fair outcome. In this instance, the interests of fairness and judicial economy would be best served by the immediate correction of KOYO's computer input errors.

Thus, the Court finds that the limited burden which would be imposed on the ITA by virtue of a remand ordering the correction of plaintiffs' input errors is far outweighed by the preference for accuracy in final dumping determinations. As aptly stated in *Serampore*, 13 CIT at ___, 696 F. Supp. at 673, the "Court is loathe to affirm a determination that might be based on a questionable record," as a "contrary holding would be tantamount to saying that once an error initially evades detection, the ITA is thereafter powerless to take remedial steps, thereby compounding the error." *Gilmore Steel*, 7 CIT at 224, 585 F. Supp. at 674.

Accordingly, the Court hereby remands this action to the ITA with directions that the eight transcription errors at issue be corrected to accurately reflect the information contained in the hard copy already included in the administrative record.

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[3] Section 1333 of the OTCA requires the administering authority to establish procedures for the correction of "ministerial" errors contained in final determinations and administrative reviews. Ministerial errors are defined by the statute as "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial."

[4] The flawed computer tapes rendered both negative and positive dumping margins in excess of 16,000%. Plaintiffs' Memo at 9.

(Slip Op. 90–98)

SONCO STEEL TUBE DIV. FERRUM, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND LONE STAR STEEL CO., DEFENDANT-INTERVENOR

Court No. 86-07-00899

[Plaintiff is directed to file further argument and evidence in support of motion for relief from judgment and for permanent injunction.]

(Decided October 3, 1990)

Dow Lohnes & Albertson (*William Silverman* and *Ryan Trainer*), for plaintiff.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, (*Jeanne E. Davidson*), for defendant; (*Craig L. Jackson*) Attorney-Advisor, Office of the Chief Counsel for Import Administration, United States Department of Commerce, for defendant.

Akin, Gump, Strauss, Hauer & Feld (*Valerie A. Slater*) for defendant-intervenor.

OPINION

RESTANI, *Judge*: Plaintiff seeks to reopen this matter and to obtain a permanent injunction requiring liquidation of entries at duty rates compatible with the court's interlocutory decisions in this unfair trade proceeding. The governmental defendant opposes reopening on the grounds that the action challenging the administrative determination was terminated by voluntary dismissal; therefore, in its view reopening for purposes of considering injunctive relief would be improper.[1]

The court rendered two remand decisions in this matter.[2] Following the first remand, the Department of Commerce (Commerce) determined that the applicable duty rate should be somewhat lower than its original rate. This change resulted from reconsideration of one of three issues remanded to Commerce. That issue was addressed in Count I of the Amended Complaint. Following a stipulation of dismissal of Count II of the complaint, an order of dismissal, signed by the deputy clerk, was entered which reads as follows:

> This Court, having affirmed in part, the remand determination of the Department of Commerce, International Trade Administration, dated November 1, 1989 and noting that all the parties appearing in this action have stipulated to the dismissal to the only remaining unresolved count of the complaint, orders that the case listed in the schedule set forth above is hereby dismissed with prejudice.

While this is not the simple voluntary dismissal that the governmental defendant claims it is, neither is it, on its face, a indication of what Commerce is to do. Apparently, Commerce is now treating some entries in accordance with the determination made after the first remand. Commerce, however, has not seen fit to liquidate and refund duties deposited on a group of older entries, in accordance with the new determi-

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[1] Defendant-intervenor takes no position.

[2] *See Sonco Steel Tube Division Ferrum. Inc. v. United States*, 12 CIT ___, 694 F. Supp. 969 (1988) and *Sonco Steel Tube Division, Ferrum, Inc. v. United States*, 13 CIT ___, 714 F. Supp. 1218 (1989).

nation. For this reason plaintiff seeks reopening and leave to seek a permanent injunction prohibiting liquidation according to the original determination.

As this court reads the applicable statute once the court has enjoined liquidation of entries at the duty rates established pursuant to Commerce's original determination, all enjoined entries are to be liquidated in accordance with the "final court decision in the action." 19 U.S.C. § 1516a(e) (1988).[3] Because an injunction was issued in this case, liquidation of entries made both before and after publication of the court decision adverse to Commerce's determination would be governed by the final decision of the court. *Id.* Obviously, a final judgment in the form of a permanent injunction would make clear Commerce's duties with regard to liquidation, but judgment in such form may not be required. If this particular form problem were the only issue, amendment of the judgment would seem appropriate. An additional question arises, however, as to whether a "final court decision," in the sense intended by the statute, ever occurred or was intended to occur.

What the parties chose to accomplish by the language employed in the dismissal order and the type of dismissal chosen is not perfectly clear. The court is unaware of the terms of settlement among the parties, or even if a settlement agreement exists. To be consistent, if Commerce considered a "final decision" of the court to have been entered it would be expected to liquidate all entries in accordance with the court's remand decision, because of the earlier injunction of liquidation, not just entries made following publication. It is possible, of course, that Commerce chose to liquidate only some entries at the new rate because of a settlement or some other reason known to Commerce, other than the existence of a "final decision." Unfortunately, the court has no information on this matter.

Timken Company v. United States, 89-1489 at 9-10 (Fed. Cir. Jan. 4, 1990) (discussing *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924 (Fed. Cir. 1984)) makes clear that court decisions remanding agency unfair trade determinations are not "final decisions" under 19 U.S.C. § 1516(e).[4] Under the facts of this case the agreed upon dismissal may constitute the requisite "final decision," as it is not clear that any further

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[3] 19 U.S.C. § 1516a(e) reads as follows:

(e) Liquidation in accordance with final decision

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit –

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

[4] *See also Timken*, note 6 ("We do, however, agree that a decision must be 'final' in the sense that the CIT has entered final judgment in order to require publication of notice under 1516a(c)(1) and (e).") and *Smith Corona Corp. v. United States*, Nos. 89-1387, 89-1388, 89-1389, 89-1398, 89-1399, 89-1400 (Fed. Cir. Sept. 26, 1990) (decision of the Court of International Trade is controlling when rendered and must be published within 10 days, citing 19 U.S.C. § 1516a(c)(1)).

steps remained to be taken in the case. If defendant's complaint is that the final order was not signed by a judge, the entry of a similar order by a judge of the court would seem to be a technicality easily remedied, assuming *arguendo* that this is a problem.

The court suspects that the real dispute here involves the original granting of an injunction against liquidation, which defendant opposed. The form of order also may reflect a lack of mutual understanding among the parties as to the effects of the original injunction given the then unsettled state of the law in this area.

Because the basis of Commerce's actions and the facts surrounding the entry of the order of dismissal are unclear the court cannot grant plaintiff's simple motion for relief from operation of judgment based on this record. The court instead accepts the motion for relief from judgment, but directs plaintiff within twenty days to present appropriate arguments and evidence, if any, in support of the motion and to include therewith any motion to include a permanent injunction arising from a final court decision within a new judgment. Defendant has twenty days to respond to all aspects of the motion.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C90/355 9/19/90 Re, C.J.	Endicott Johnson Corp.	84-1-00109	700.95 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	Norfolk Footware
C90/356 9/19/90 Re, C.J	Endicott Johnson Corp.	84-3-00442	700.95 12.5%	700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O.	Savannah Footwear 87-136 (1987)
C90/357 9/19/90 Re, C.J.	Endicott Johnson Corp.	84-3-00447	700.95 12.5%	700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	St. Louis Footwear
C90/358 9/19/90 Re, C.J.	Endicott Johnson Corp.	84-6-00803	700.95 12.5%	700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	St. Louis Footwear
C90/359 9/19/90 Re, C.J.	Endicott Johnson Corp.	84-8-01081	700.95 12.5%	700.35 8.5%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	Seattle Footwear
C90/360 9/19/90 Re, C.J.	J.C. Penney Purchasing Corp.	83-10-01484	700.95 12.5%	700.35 .85% 700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	Los Angeles Norfolk Footwear
C90/361 9/19/90 Re, C.J.	J.C. Penney Purchasing Corp.	83-11-01700	700.95 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	Los Angeles Norfolk Footwear
C90/362 9/19/90 Re, C.J.	J.C. Penney Purchasing Corp.	84-2-00200	700.95 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. v. U.S., S.O. 87-136 (1987)	Los Angeles Norfolk Footwear

C90/363 9/19/90 Re, C.J.	J.C. Penney Purchasing Corp.	85-2-00266	700.95 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Footwear
C90/364 9/19/90 Re, C.J.	J.C. Penney Purchasing Corp.	85-6-00861	700.95 12.5%	700.35 8.5%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Footwear
C90/365 9/20/90 Aquilino, J.	Americana Creations	85-6-00760	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/366 9/20/90 Aquilino, J.	D&M Watch Corp.	84-11-01568	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/367 9/20/90 Aquilino, J.	Eastman Watch Co.	84-12-01735	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/368 9/20/90 Aquilino, J.	Grundig Electric Co.	84-11-01637	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/369 9/20/90 Aquilino, J.	Jawhar Electric Co.	84-11-01578	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches

ABSTRACTED CLASSIFICATION DECISIONS – Continued

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C90/370 9/20/90 Re, C.J.	J.C. Penney Purchasing Corp.	81-10-01403	700.45 10%	700.35 8.5%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Footwear
C90/371 9/20/90 Re, C.J.	J.C. Penney Purchasing Corp.	81-12-01734	700.95 12.5%	700.35 8.5%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Footwear
C90/372 9/20/90 Re, C.J.	J.C. Penney Purchasing Corp.	83-5-00737	700.95 12.5%	700.35 8.5%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Philadelphia Footwear
C90/373 9/20/90 Re, C.J.	J.C. Penney Purchasing Corp.	83-7-00976	700.95 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Norfolk Footwear
C90/374 9/20/90 Aquilino, J.	Juno Export	84-11-01575	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/375 9/20/90 Aquilino, J.	Juno Export	85-5-00731	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/376 9/20/90 Re, C.J.	MCF Footwear Corp.	83-2-00198	700.95 12.5%	700.35 8.5% 700.45 10%	Mitsubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Norfolk Footwear

C90/377 9/20/90 Aquilino, J.	S.W.I. Trading	84-11-01639	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/378 9/20/90 Aquilino, J.	Time Electronics Corp.	85-7-00941	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/379 9/20/90 Aquilino, J.	World Forum Watch	85-1-00054	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/380 9/20/90 Aquilino. J.	World Forum Watch	85-5-00706	716.09–716.45, 715.05 Various rates	688.45, 688.42, 688.43 or 688.36 Various rates	Belfont Sales Corp. *v.* U.S., 878 F.2d 1413 (1989) or Texas Instruments, Inc. *v.* U.S., 673 F.2d 1375 (1982)	New York Quartz watches
C90/381 9/21/90 Re, C.J.	Fathom/H.I.M., Inc.	87-7-00777	Not stated	A359.60 or 359.60 Various rates	Agreed statement of facts	Tampa Neoprene sheets, etc.
C90/382 9/24/90 Newman, S.J. clamps	Erika, Inc.	90-4-00174	9018.90 80 7.9%	9018.39 00 4.2%	Agreed statement of facts	Los Angeles A.V. Fistula Needle Sets with and without
C90/383 9/24/90 Newman, S.J.	Nissho Iwi American Corp.	88-3-00181	700.95 12.5%	700.35 8.5%	Mitahubishi Int'l Corp. *v.* U.S., S.O. 87-136 (1987)	Los Angeles Footwear
C90/384 9/24/90 Newman, S.J.	Paul Marshall Products, Inc.	88-3-00179	386.04 31%	386.50 10.5%	Agreed statement of facts	Los Angeles Mr. Duck Salt and Peper Sets

ABSTRACTED VALUATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V90/43 9/21/90 Musgrave, J.	John V. Carr & Sons, Inc.	84-7-01019	Constructed value	$18,132.91 (Canadian dollars)	Agreed statement of facts	Buffalo Parts for a waste recycling plant

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